

## *Ogston v. Arizona Department of Revenue – Backgrounder*

### Executive Summary

The Yuma County Hospital District (the “District”), a special taxing district charged with oversight duties related to the Yuma Regional Medical Center, has imposed a secondary property tax on Yuma property owners without the necessary voter approval. The District did this by making its request directly to the Yuma County Board of Supervisors (the “Board”), bypassing voters and telling the Board it had no choice in the matter and was legally required to impose the tax.

This violates clear provisions in Arizona law that special taxing entities like the District may not impose property taxes without first obtaining voter approval in an election. Goldwater has stepped in on behalf of a Yuma property owner, Rick Ogston, and filed a lawsuit seeking a refund of the unlawful taxes already assessed against Mr. Ogston, as well as a declaration from the court that the tax is illegal and invalid.

### Background

The District is a special taxing district charged with overseeing certain aspects of the Yuma Regional Medical Center’s operations. The District never imposed a property tax or obtained voter approval to do so until 2021, when it asked the Board to impose a secondary property tax directly, without voter approval. The District indicated to the Board that it needed the tax to raise funds for legal bills it had incurred in litigation against the Yuma Regional Medical Center.

That litigation is still ongoing, and in the summer of 2023, the District asked the Board to impose the tax yet again, for the third year in a row. The District sent its budget to the Board along with a cover letter informing the Board that “the District require[d] \$1,811,300.00 to be immediately raised by taxation pursuant to ARS § 48-1914(A).” The Board complied and imposed a secondary property tax to fund the District. This tax was assessed against all non-exempt Yuma property owners, including Rick Ogston, and the first installment (half of the total amount assessed) came due November 1, 2023.

### Legal Analysis

As a special taxing district, the District was established, and is governed, by Title 48 of the Arizona Revised Statutes. Title 48 recognizes nearly 40 different types of special districts, from “Special Road Districts” to “Regional Attraction Districts” to “Antinoxious Weed Districts.” Arizonans don’t hear much about these districts, but collectively, they exercise considerable power over Arizonans’ lives and their tax bills.

There are hundreds of special districts in Arizona, including more than 115 active districts in Maricopa County alone. Many of these entities have the power to impose taxes, including property and sales taxes.

There are limitations on this power, however. One key limitation that applies to many of these districts, including special hospital districts, is that they cannot impose taxes on residents unless they first obtain voter approval. In this case, the District's power to impose taxes derives from A.R.S. § 48-1907, which authorizes the District to “[i]mpose a secondary property tax on all taxable property within the district for the purpose of funding the operation and maintenance of a hospital... that is owned or operated by the district or to pay costs of an ambulance service contract entered into pursuant to this section.” A.R.S. § 48-1907(A)(6). This authority, however, is subject to a clear limitation: “Prior to the initial imposition of such a tax a majority of the qualified electors must approve such initial imposition.” *Id.* Moreover, if the tax is imposed for multiple years, it “must be approved by a majority of the qualified electors at least every five years from the date of the initial imposition.” *Id.*

The statute the District cited for the supposed authority to bypass voter approval, A.R.S. § 48-1914, does not in fact justify its request to directly impose a secondary property tax. Instead, Section 1914(A) sets out the procedures for the District's reporting obligations, including a requirement that the District provide the Board an annual budget “together with an estimate in writing of the amount of money needed to be raised by taxation.” Section 1914 details the procedures for determining the *amount* of a tax to levy, where such a tax has already been voter-approved. It does *not* provide a separate authorization, independent of A.R.S. § 48-1907(A)(6), to bypass the voter approval requirement and impose a tax directly.

#### Case Logistics

The case is *Ogston v. Arizona Department of Revenue*. The complaint was filed December 14, 2023 in Arizona Tax Court, a specialized department of the Maricopa County Superior Court, seeking a refund of the tax amounts already collected and a declaration that the tax is illegal and invalid.

#### The Legal Team

Rick Ogston is represented by lawyers at the Goldwater Institute's Sharf-Norton Center for Constitutional Litigation.

**John Thorpe** is a Staff Attorney at the Goldwater Institute's Scharf-Norton Center for Constitutional Litigation, where he litigates in the areas of education, free speech, economic liberty, government transparency, regulatory reform, and property rights.

**Jon Riches** is the Vice President for Litigation for the Goldwater Institute's Scharf-Norton Center for Constitutional Litigation and General Counsel for the Institute. He litigates in federal and state trial and appellate courts in the areas of economic liberty, regulatory reform, free speech, taxpayer protections, public labor issues, government transparency, and school choice, among others. Jon has litigated cases in multiple state and federal trial and appellate courts.